

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Karen KRUMMEN,
6706 Devonwood Dr.
North College Hill, Ohio 45224

Al LONG,
7024 Clovernook Ave.
North College Hill, Ohio 45231

Erna OLAFSON,
1553 Oak Knoll Drive
North College Hill, Ohio 45224

Maureen MASON,
6934 Pin Oak Drive
North College Hill, Ohio 45239

Marcia WEAVER,
6508 Savannah
North College Hill, Ohio 45239

and

Teresa EILERMANN,
1926 Sundale Ave.
North College Hill, Ohio 45239

Plaintiffs,

vs.

**CITY OF NORTH COLLEGE
HILL,**
1500 W. Galbraith Rd.
North College Hill, OH 45239

and

**HAMILTON COUNTY BOARD
OF ELECTIONS**
804 Broadway
Cincinnati, OH 45202

Case No. 1:13-cv-193

**VERIFIED COMPLAINT FOR
TEMPORARY RESTRAINING
ORDER AND DECLARATORY
AND INJUNCTIVE RELIEF**

and

**ALEX TRIANTAFILOU, Chair of
Hamilton County, Ohio Board of
Elections, and members
TIMOTHY BURKE, CALEB
FAUX, and CHARLES “CHIP”
GERHARDT, III,
804 Broadway
Cincinnati, OH 45202,**

*all sued in their official capacities
as Chair and members of the
Hamilton County, Ohio Board of
Elections.*

Defendants.

I. PRELIMINARY STATEMENT

1. This action seeks an order 1) declaring that the Amendment to the Charter of North College Hill approved in the general election of November 2012 (the “Amendment”), imposing retroactive term limits for all elected officials of North College Hill, violates Plaintiffs’ federal civil rights as well as the Ohio Constitution’s prohibition against retroactive laws, and 2) enjoining Defendants North College Hill and the Hamilton County Board of Elections (“Board of Elections”) from applying the new term limits retroactively in the upcoming North College Hill City Council (“Council”) elections. Plaintiffs are 1) current members of the Council who seek election to an additional term on the Council, but are barred by the unconstitutional Amendment, and 2) registered voters residing in North College Hill who have voted for these candidates, intend to support them and vote for them in the upcoming election, and intend to sign and

circulate nominating petitions to secure their place on the ballot. Because those nominating petitions require signatories to attest that Plaintiffs Maureen Mason and Teresa Eilermann are qualified for the positions they seek, Plaintiffs cannot sign and/or circulate petitions without incurring potential legal penalty until this dispute over retroactivity is resolved.

2. This action seeks to maintain the *status quo* by enjoining the retroactive application of the Amendment, which violates Plaintiffs' First and Fourteenth Amendment Rights, along with rights guaranteed by the Ohio Constitution.

II. JURISDICTION AND VENUE

3. Jurisdiction over the federal claims is conferred on this Court by 28 U.S.C. §1331 and §1343(3) and (4). Venue is proper under 28 U.S.C. §1391 and Local Rule 82.1 (c).

III. PARTIES

4. Plaintiff Teresa Eilermann is a resident and registered voter in North College Hill, Ohio. She is a member of the Council, having served more than 27 consecutive years in that position. She intends to seek reelection in the November 2013 general election.

5. Plaintiff Maureen Mason is a resident and registered voter in North College Hill, Ohio. She is a member of the Council, having served more than 21 consecutive years in that position. She intends to seek reelection in the November 2013 general election.

6. Plaintiffs Karen Krummen, Al Long, Erna Olafson and Marcia Weaver are residents and registered voters in North College Hill, Ohio. They have voted for Plaintiffs Mason and Eilermann previously, intend to vote for them in the November 2013 general election, intend to sign, circulate and submit to the Board of Elections nominating petitions on their behalf, and support their campaigns in other ways, over the course of 2013.

7. Defendant North College Hill is a City in Ohio.

8. Defendant Hamilton County Board of Elections (“Board of Elections”) is the Ohio Secretary of State’s representative for county election matters in Hamilton County, Ohio (ORC § 3501.06). Among other tasks, the Hamilton County Board of Elections is responsible for accepting, reviewing and verifying nominating petitions for candidates to elected office within Hamilton County. The Board is sued for injunctive relief only.

IV. FACTS

A. The Charter Change

9. In November 2012, the voters of North College Hill approved a Charter Amendment that said:

Shall ARTICLE XIII: Nominations and Elections of the Charter of the City of North College Hill be amended by adding

*Section 13.09 Setting TERM LIMITS for City Elective Offices, as follows?
Upon passage of this Charter Amendment, **holders of elective office in the City of North College Hill (whether past, current or future) may not seek re-election to the same office if they will have already served a cumulative 12 years or more in that same office.** Such individuals would thus be “Term-limited” for that office. Elective Offices in North College Hill include Mayor, President of City Council, City Council Member and any other elective office that would be created in the future. Term-limited individuals for an elective office may not be appointed to fill out the unexpired term of a person leaving that same office. **Any past, present or***

future office holders having time remaining in an unexpired term after already serving a cumulative 12 or more years may complete their terms but not run for the same office again. Term-limited individuals may seek election to any of the other types of elective City Government offices as long as they are not Term-limited in those offices as well. Should time in office become an issue in determining one's "Term-limited" status, that status may be confirmed by using archived City, County or any other public records. Shall the proposed charter amendment be adopted?

(Charter Amendment attached hereto as Exhibit A) (emphasis added)

10. Plaintiffs Mason and Eilermann have each served more than 12 years on the City Council of North College Hill. But for the restriction placed on them by the Amendment, they would seek an additional term on the Council, and intend and desire to appear on the ballot for this November's at-large election.

11. But for the fear of legal penalty for falsely attesting that Mason and Eilermann are qualified for a seat on the Council when they are now barred by the Amendment, Plaintiffs would circulate, sign and submit petitions to the Board of Elections to secure Mason's and Eilermann's respective places on the ballot.

B. Need for Injunction

12. There is no adequate remedy at law that would declare the retroactive application of the Amendment to be unconstitutional, enjoining Defendant from unconstitutionally keeping Plaintiffs off the Council ballot and allowing Plaintiffs to initiate the petition circulation process for each candidate.

13. Plaintiffs have demonstrated a substantial likelihood of success in this matter. Federal law prohibits ballot access restrictions that restrain First and Fourteenth Amendment rights without an adequate justification, and the Ohio Constitution, which prohibits retroactive laws in general, prohibits the retroactive application of term limits in particular. *See State ex rel. Mirlisena v. Hamilton County Board of Elections*, 67 Ohio St. 3d 597 (Ohio 1993).

14. Without the relief requested, Plaintiffs will be denied their First and Fourteenth Amendment rights under the U.S. Constitution, as well as their right not to be subject to retroactive laws under the Ohio Constitution. Only prompt action by this federal court ordering declaratory and injunctive relief will serve the public interest and allow Plaintiffs Eilermann and Mason to move forward in seeking reelection, and allow all Plaintiffs to exercise their First and Fourteenth Amendment rights without fear of legal penalty.

V. CLAIM FOR RELIEF

First Claim – 42 U.S.C. §1983 – United States Constitution

15. Defendant North College Hill, acting under color of law, has violated rights secured to the Plaintiffs by the First and Fourteenth Amendments to the United States Constitution including the right to freedom of association, the right to due process of law and the right to equal protection under the law.

Second Claim – Ohio Declaratory Judgment Statute – Ohio Constitution

16. The Amendment violates Ohio's Constitution by retroactively applying term limits to Plaintiffs Eilermann and Mason, current members of the North College Hill City Council.

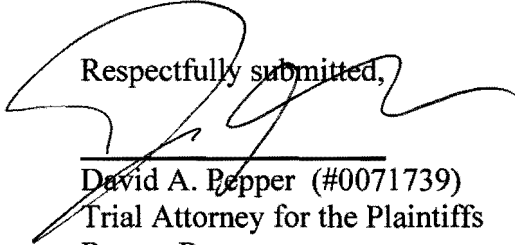
VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- A. Issue a Declaratory Judgment that the Amendment, insofar as it applies term limits retroactively, violates the Federal Constitutional rights of Plaintiffs as well as the State Constitution's prohibition on retroactive laws;

- B. Issue a preliminary and permanent injunction enjoining Defendants from retroactively applying the Amendment's new term limits in determining eligibility of candidates for the 2013 and all future North College Hill elections;
- C. Award to Plaintiffs reasonable costs, expenses and attorney fees; and,
- D. Award such other and further relief as this Court shall deem just and reasonable.

Respectfully submitted,

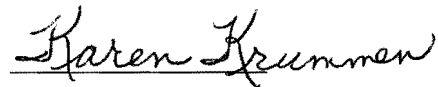


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VERIFICATION

I, Karen Krummen, pursuant to 28 U.S.C. § 1746, declare under the penalty of perjury under the United States of America that the following is true and correct:

1. The allegations in this Complaint are true and accurate to the best of my knowledge
2. The attached exhibits are true and accurate copies of public records obtained by me or my counsel.

A handwritten signature in cursive script that reads "Karen Krummen". The signature is written in dark ink and is positioned above the printed name.

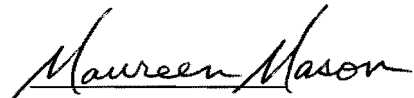
Karen Krummen

Executed 3/8/2013

VERIFICATION

I, Maureen Mason, pursuant to 28 U.S.C. § 1746, declare under the penalty of perjury under the United States of America that the following is true and correct:

1. The allegations in this Complaint are true and accurate to the best of my knowledge
2. The attached exhibits are true and accurate copies of public records obtained by me or my counsel.

A handwritten signature in black ink that reads "Maureen Mason". The signature is written in a cursive style with a horizontal line underneath the name.

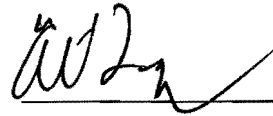
Maureen Mason

Executed 3/14/2013

VERIFICATION

I, Al Long, pursuant to 28 U.S.C. § 1746, declare under the penalty of perjury under the United States of America that the following is true and correct:

1. The allegations in this Complaint are true and accurate to the best of my knowledge.
2. The attached exhibits are true and accurate copies of public records obtained by me or my counsel.

A handwritten signature in black ink, appearing to read 'Al Long', written over a horizontal line.

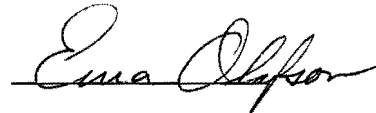
Al Long

Executed 3/14/2013

VERIFICATION

I, Erna Olafson, pursuant to 28 U.S.C. § 1746, declare under the penalty of perjury under the United States of America that the following is true and correct:

1. The allegations in this Complaint are true and accurate to the best of my knowledge
2. The attached exhibits are true and accurate copies of public records obtained by me or my counsel.

A handwritten signature in black ink, appearing to read "Erna Olafson", written over a horizontal line.

Erna Olafson

Executed 3/14/2013

VERIFICATION

I, Marcia Weaver, pursuant to 28 U.S.C. § 1746, declare under the penalty of perjury under the United States of America that the following is true and correct:

1. The allegations in this Complaint are true and accurate to the best of my knowledge
2. The attached exhibits are true and accurate copies of public records obtained by me or my counsel.

A handwritten signature in black ink that reads "Marcia B. Weaver". The signature is written in a cursive style with a large, stylized "M" and "W".

Marcia Weaver

Executed 3/14/2013

VERIFICATION

I, Teresa Eilermann, pursuant to 28 U.S.C. § 1746, declare under the penalty of perjury under the United States of America that the following is true and correct:

1. The allegations in this Complaint are true and accurate to the best of my knowledge
2. The attached exhibits are true and accurate copies of public records obtained by me or my counsel.

A handwritten signature in black ink, appearing to read "Teresa Eilermann", with a long horizontal flourish extending to the right.

Teresa Eilermann

Executed 3/14/2013

EXHIBIT A

Official Hamilton County Candidates and Issues List
General Election November 6, 2012
10/1/2012

17 PROPOSED CHARTER AMENDMENT (BY PETITION) CITY OF NORTH COLLEGE HILL

A majority affirmative vote is necessary for passage.

Shall ARTICLE XIII: Nominations and Elections of the Charter of the City of North College Hill be amended by adding Section 13.09 Setting TERM LIMITS for City Elective Offices, as follows?

Upon passage of this Charter Amendment, holders of elective office in the City of North College Hill (whether past, current or future) may not seek re-election to the same office if they will have already served a cumulative 12 years or more in that same office. Such individuals would thus be "Term-limited" for that office.

Elective Offices in North College Hill include Mayor, President of City Council, City Council Member and any other elective office that would be created in the future.

Term-limited individuals for an elective office may not be appointed to fill out the unexpired term of a person leaving that same office.

Any past, present or future office holders having time remaining in an unexpired term after already serving a cumulative 12 or more years may complete their terms but not run for the same office again.

Term-limited individuals may seek election to any of the other types of elective City Government offices as long as they are not Term-limited in those offices as well.

Should time in office become an issue in determining one's "Term-limited" status, that status may be confirmed by using archived City, County or any other public records.

Shall the proposed charter amendment be adopted?

YES

NO

18 PROPOSED TAX LEVY (RENEWAL) CITY OF NORWOOD

A majority affirmative vote is necessary for passage.

A renewal of a tax for the benefit of the City of Norwood, County of Hamilton, Ohio, for the purpose of **CURRENT EXPENSES** at a rate not exceeding eight (8) mills for each one dollar of valuation, which amounts to eighty cents (\$0.80) for each one hundred dollars of valuation, for five (5) years, commencing in 2012, first due in calendar year 2013.

FOR THE TAX LEVY

AGAINST THE TAX LEVY

19 PROPOSED ELECTRIC AGGREGATION CITY OF SHARONVILLE

A majority affirmative vote is necessary for passage.

Shall the City of Sharonville, Counties of Hamilton and Butler, Ohio, have the authority to aggregate the retail electric loads located in the City of Sharonville, and for that purpose, enter into service agreements to facilitate for those loads the sale and purchase of electricity, such aggregation to occur automatically except where any person elects to opt out?

YES

NO

20 PROPOSED NATURAL GAS AGGREGATION CITY OF SHARONVILLE

A majority affirmative vote is necessary for passage.

Shall the City of Sharonville, Counties of Hamilton and Butler, Ohio, have the authority to aggregate the retail natural gas loads located in the City of Sharonville, and for that purpose, enter into service agreements to facilitate for those loads the sale and purchase of natural gas, such aggregation to occur automatically except where any person elects to opt out?

YES

NO

EXHIBIT B

Form No. 3-N Prescribed by Secretary of State (03-09)

NOMINATING PETITION AND STATEMENT OF CANDIDACY FOR MUNICIPAL OFFICE

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.

Revised Code 3501.38, 3513.261, 3513.262

**NOTE – THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, _____, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is _____,
(Street and Number, if any, or Rural Route Number)
_____, Ohio _____; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of _____
in the Municipality of _____,
for the: (check one) ☐ full term, or ☐ unexpired term ending _____, in
(Fill in the appropriate date)
_____ County, Ohio at the general election to be held on the _____ day
of _____.

I further declare that I am an elector qualified to vote for the office I seek.

Dated this _____ day of _____.

(Signature of Candidate)

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

I, _____, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

| NAME | RESIDENCE |
|------|-----------|
| | |
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| | |
| | |
| | |

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate _____ as
a candidate for election to the office of _____ in the municipality of _____,
for the: (check one) ☐ full term, or ☐ unexpired term ending _____,
(Fill in the appropriate date)
to be voted for at the next general election, and certify said person is, in
our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

| | SIGNATURE | VOTING RESIDENCE ADDRESS STREET AND NUMBER | CITY, VILLAGE OR TOWNSHIP | COUNTY | DATE OF SIGNING |
|----|-----------|--|------------------------------|--------|--------------------|
| 1. | | | | | |
| 2. | | | | | |
| 3. | | | | | |
| 4. | | | | | |

| | SIGNATURE | VOTING RESIDENCE ADDRESS STREET AND NUMBER | CITY, VILLAGE OR TOWNSHIP | COUNTY | DATE OF SIGNING |
|-----|-----------|--|------------------------------|--------|--------------------|
| 5. | | | | | |
| 6. | | | | | |
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| 16. | | | | | |
| 17. | | | | | |
| 18. | | | | | |

CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, _____, declare under penalty of election falsification that I
 (Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing _____ signatures; that I witnessed the affixing of every signature; that all signers were to
 (Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

**WHOEVER COMMITS ELECTION
FALSIFICATION IS GUILTY OF A
FELONY OF THE FIFTH DEGREE**

 (Signature of Circulator)

 (Permanent residence address)

 (City or Village, State and Zip Code)

| | | | |
|--|---------------------------------|--|-----------------------|
| County Board of Elections Form 3-N Nominating Petition For Municipal Office | Statement of Candidacy of _____ | Certificate of Validity REVISED CODE 3501.11 We, the undersigned members of the Board of Elections of this county, certify that we have reviewed and examined the foregoing petition and find it to be sufficient and valid, and caused our signatures and official seal to be affixed at _____, Ohio, This _____ day of _____, _____ | Chairperson _____ |
| | Candidate for _____ | | Member _____ |
| | | | Member _____ |
| | | | Member _____ |
| | | | Member _____ |
| | | | Director _____ (seal) |